

## TRADEMARK ASSIGNMENT COVER SHEET


Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM358774

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	LIEN		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Avalanche Licensing LLC		08/07/2015	LIMITED LIABILITY COMPANY: MASSACHUSETTS
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Lawrence Shutzer		
<b>Street Address:</b>	One Salem Street #25		
<b>City:</b>	Swampscott		
<b>State/Country:</b>	MASSACHUSETTS		
<b>Postal Code:</b>	01902		
<b>Entity Type:</b>	INDIVIDUAL: UNITED STATES		
<b>PROPERTY NUMBERS Total: 4</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Serial Number:</b>	86346268		
<b>Serial Number:</b>	86345627	AVALANCHE	
<b>Registration Number:</b>	3081544	AVALANCHE WEAR	
<b>Registration Number:</b>	3100672	AVALANCHE WEAR	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	6174826444		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	617-482-8200		
<b>Email:</b>	bgold@connkavanaugh.com		
<b>Correspondent Name:</b>	Barry E. Gold		
<b>Address Line 1:</b>	Conn Kavanaugh - Ten Post Office Square		
<b>Address Line 4:</b>	Boston, MASSACHUSETTS 02109		
<b>ATTORNEY DOCKET NUMBER:</b>	07428-001		
<b>NAME OF SUBMITTER:</b>	Barry E. Gold		
<b>SIGNATURE:</b>	/Barry E. Gold/		
<b>DATE SIGNED:</b>	10/15/2015		
<b>Total Attachments: 9</b>			

OP \$115.00 86346268

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<p align="center"><b>ORDER FOR PRELIMINARY INJUNCTION</b> (Mass. R. Civ. P. 65)</p>	<p>DOCKET NUMBER <b>1577CV00341</b></p>	<p><b>Trial Court of Massachusetts The Superior Court</b></p> 
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<p>CASE NAME:  Red Rock Trading Co Inc et al vs. Lawrence Shutzer et al</p>	<p>Thomas H. Driscoll, Jr., Clerk of Courts</p>
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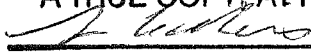
<p>TO: Red Rock Trading Co Inc Petrucci, Ronald Avalanche Licensing LLC</p>	<p>COURT NAME &amp; ADDRESS Essex County Superior Court - Newburyport 145 High Street Newburyport, MA 01950</p>
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Upon the application of  
  
Defendant: Shutzer, Lawrence


this action came before Hon. Elizabeth M Fahey, J., presiding, and upon actual notice to the parties as required by Mass. R. Civ. P. 65, and after a hearing and consideration thereof,

it is ORDERED and ADJUDGED:

That the party(s) named above and their officers, agents, servants, employees, attorneys and counselors, and upon those persons in active concert or participation with them, and each and every one of them are: Preliminary Injunction issued for Defendant(/Plaintiff-in-Counterclaim, Lawrence Shutzer. It is Ordered and Adjudged that Plaintiffs/Defendants-in-Counterclaim, Red Rock Trading Co Inc, Ronald Petrucci, Avalanche Licensing LLC and their various attorneys and agents are: Defendant/Plaintiff-in-Counterclaim Lawrence Shutzer now moves for an Order enjoining Plaintiffs, Defendants-in-Counterclaim, Red Rock Trading Co., Inc. ("Red Rock"), Ronald Petrucci, and Avalanche Licensing, LLC ("Avalanche Licensing") from: 1.) Selling or transferring all or substantially all of their assets; 2.) Taking any other action, directly or indirectly, to transfer, alienate, liquidate, encumber, pledge, loan, assign, conceal, dissipate, convert, withdraw, or otherwise dispose of any of the Avalanche Trademarks, as defined below, or 3.) paying any dividends to shareholders, distributions to members, or bonuses to officers, directors, members, and employees.

**A TRUE COPY ATTEST**  
  
**DEPUTY ASS'T. CLERK**

<p>DATE ISSUED <b>08/07/2015</b></p>	<p>ASSOCIATE JUSTICE <b>Hon. Elizabeth M Fahey</b></p>	<p>CLERK MAGISTRATE/ASSISTANT CLERK <b>X</b> </p>	<p>SESSION PHONE# <b>(978)462-4474</b></p>
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<b>CLERK'S NOTICE</b>	DOCKET NUMBER <b>1577CV00341</b>	Trial Court of Massachusetts The Superior Court 
CASE NAME: Red Rock Trading Co Inc et al vs. Lawrence Shutzer et al		Thomas H. Driscoll, Jr., Clerk of Courts
TO: Kurt Baran Fliegau, Esq. Conn, Kavanaugh, Rosenthal Peisch & Ford, LLP Ten Post Office Square Boston, MA 02109		COURT NAME & ADDRESS Essex County Superior Court - Newburyport 145 High Street Newburyport, MA 01950
<p style="text-align: center;">You are hereby notified that on 08/03/2015 the following entry was made on the above referenced docket:</p> <p>Endorsement on Motion for Defendant Lawrence Shutzer's Motion for Pre-Judgment Security No. 2 (#55.0): ALLOWED</p> <p>After review, this motion is allowed as to Paragraphs 1, 2, and 3 below, finding that defendant Shutzer is likely to be successful and to preserve the status of plaintiff's finances. Preliminary Injunction as to these three (3) paragraphs.</p>		
DATE ISSUED <b>08/03/2015</b>	ASSOCIATE JUSTICE/ ASSISTANT CLERK <b>Hon. Elizabeth M Fahey</b>	SESSION PHONE# <b>(978)462-4474</b>

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT  
C.A. NO. ESCV2015-00341

*Deirdre unbound prepared to removal of pm  
Company evidence with 9/7/15, authorized to 7 days  
EMM Delivery 8/15  
7/20/15*

RED ROCK TRADING CO., INC.,  
AVALANCHE LICENSING, LLC, and  
RONALD PETRUCCI,

Plaintiff,

v.

LAWRENCE SHUTZER,  
STUART EDELMAN,  
LAUREN GAUDET,  
ALYSSA DANDREO,  
MARK DIAMOND,  
CAROLANN SIERRA,  
SALEM APPAREL COMPANY,  
ELEMENTS APPAREL,  
VAKKO APPAREL, and  
JOHN DOE, INC.,

Defendants.

**FILED**  
IN THE SUPERIOR COURT  
FOR THE COUNTY OF ESSEX

JUL 15 2015

*Thomas H. Russell*  
CLERK

*↓*  
*After review, this motion is allowed  
as to paragraphs 1, 2 & 3  
below finding that Shutter is  
likely able to be successful  
and to preserve  
the status of  
its finances.*

**DEFENDANT LAWRENCE SHUTZER'S MOTION FOR PRE-JUDGMENT SECURITY**  
**NO. 2**

*For Order Enjoining Plaintiffs From Transferring Or Selling Corporate Assets Or Paying  
Dividends, Distributions, or Bonuses Until Stock Payment Is Paid In Full*

Defendant/Plaintiff-in-Counterclaim Lawrence Shutzer now moves for an Order  
enjoining Plaintiffs Red Rock Trading Co., Inc. ("Red Rock"), Ronald Petrucci, and Avalanche  
Licensing, LLC ("Avalanche Licensing") from:

*PI @  
7/20/15  
3 IPs  
EMM Delivery  
8/13/15*

- ① selling or transferring all or substantially all of their assets;
- ② taking any other action, directly or indirectly, to transfer, alienate, liquidate, encumber, pledge, loan, assign, conceal, dissipate, convert, withdraw, or otherwise dispose of any of the Avalanche Trademarks, as defined below; or
- ③ paying any dividends to shareholders, distributions to members, or bonuses to officers, directors, members, and employees;

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT  
C.A. NO. ESCV2015-00341

\_\_\_\_\_  
RED ROCK TRADING CO., INC.,  
AVALANCHE LICENSING, LLC, and  
RONALD PETRUCCI,

*Plaintiff,*

v.

LAWRENCE SHUTZER,  
STUART EDELMAN,  
LAUREN GAUDET,  
ALYSSA DANDREO,  
MARK DIAMOND,  
CAROLANN SIERRA,  
SALEM APPAREL COMPANY,  
ELEMENTS APPAREL,  
VAKKO APPAREL, and  
JOHN DOE, INC.,

*Defendants.*

**DEFENDANT LAWRENCE SHUTZER'S MOTION FOR PRE-JUDGMENT SECURITY**

**NO. 2**

*For Order Enjoining Plaintiffs From Transferring Or Selling Corporate Assets Or Paying Dividends, Distributions, or Bonuses Until Stock Payment Is Paid In Full*

Defendant/Plaintiff-in-Counterclaim Lawrence Shutzer now moves for an Order enjoining Plaintiffs Red Rock Trading Co., Inc. ("Red Rock"), Ronald Petrucci, and Avalanche Licensing, LLC ("Avalanche Licensing") from:

- selling or transferring all or substantially all of their assets;
- taking any other action, directly or indirectly, to transfer, alienate, liquidate, encumber, pledge, loan, assign, conceal, dissipate, convert, withdraw, or otherwise dispose of any of the Avalanche Trademarks, as defined below; or
- paying any dividends to shareholders, distributions to members, or bonuses to officers, directors, members, and employees;

until Red Rock's obligations to Mr. Shutzer under the parties' November Agreement are paid in full.<sup>1</sup> Mr. Shutzer seeks this preliminary relief to preserve the status quo and secure the judgment that he is likely to recover for the "Stock Payment" due to him. In the parties' Agreement, Red Rock and Avalanche Licensing expressly promised that they would not sell their assets or the Avalanche Trademarks until Mr. Shutzer was paid in full. As further grounds for this motion, Mr. Shutzer relies upon his previously filed Verified Counterclaims (Paper No. 14), his previously filed Affidavit dated July 6, 2015 (Paper No. 46), his newly filed Amended Counterclaims, and further states as follows.

#### FACTUAL AND PROCEDURAL BACKGROUND

This Court (Fahey, J.) is familiar with the background of this dispute, having presided over a July 9, 2015 hearing on Plaintiffs' motion for a preliminary injunction (Paper No. 43) and Defendants' renewed request for expedited proceedings (Paper No. 46). By way of further background, Mr. Shutzer relies upon, and incorporates by reference, his contemporaneously filed *Motion for Pre-Judgment Security No. 1*.

This action arises from a November, 2014 agreement (the "Agreement") between the parties, a copy of which is attached at Tab A. The Agreement provides for the redemption of Mr. Shutzer's 50% interest in Red Rock in exchange for Red Rock's payment of a certain "Stock Payment." The four parties to the Agreement are Mr. Shutzer, Mr. Petrucci, Red Rock, and Avalanche Licensing. Mr. Petrucci signed on behalf of Red Rock as its President, and on behalf of Avalanche Licensing as its Manager. (Tab A, p. 6).

Avalanche Licensing was made party to the Agreement to provide Mr. Shutzer with further security for the Stock Payment, and to make sure that the Avalanche Trademarks were

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<sup>1</sup> This motion is filed directly with the Court pursuant to this Court's Scheduling Order suspending the provisions of Superior Court Rule 9A in order to accelerate the disposition of this action.

not sold before he received it. Back in July, 2014, Mr. Petrucci had secretly executed a series of documents that transferred the Avalanche Trademarks – identified by Reg. No. 3,081,544, Reg. No. 3,100,672, Serial No. 86346268 (application pending), Serial No. 86345627 (application pending), and Serial No. 86346268 (application pending) – to Avalanche Licensing. (Verified Complaint, ¶ 39, Shutzer v. Petrucci, Docket No. ESCV2014-01588, attached at **Tab B**). In an ensuing Superior Court action, Mr. Shutzer alleged that Mr. Petrucci’s secret transfer of the Avalanche Trademarks to his family company violated his fiduciary duties to Red Rock and Mr. Shutzer. (*Id.* ¶ 34). In part to resolve that claim against him, Mr. Petrucci executed the Agreement.

Under the Agreement, Red Rock is the obligor primarily responsible for the \$2.9 MM Stock Payment to Mr. Shutzer (para. 1). To provide additional security, Avalanche Licensing agreed to execute an unconditional \$1 MM guarantee for this payment (para. 4). Mr. Petrucci, in his personal capacity, agreed to execute an additional, unconditional \$350,000 guarantee. (Para. 4). And to provide further security, Red Rock and Avalanche Licensing both agreed that: “Until Red Rock’s obligations to Mr. Shutzer herein are paid in full, Red Rock and Avalanche [Licensing] each shall agree to not sell or transfer all or substantially all of their assets, including but not limited to, in the case of Avalanche [Licensing], the Avalanche trademark(s).” (Para. 1(D))

### ARGUMENT

To obtain pre-judgment security or injunctive relief, the moving party must establish a likelihood of success of the merits. Mass. R. Civ. P. 4.1; Packaging Indus. Grp., Inc. v. Cheney, 380 Mass. 609, 617-618 (1980). For all the reasons set forth in his contemporaneously filed



*Motion for Pre-Judgment Security No. 1*, Mr. Shutzer demonstrates a likelihood of success on his Counterclaim to enforce the payment provisions of Agreement.

Mr. Shutzer faces an ongoing threat of irreparable harm unless can obtain pre-judgment security. Mr. Shutzer is currently 89 years old and in declining health. (Shutzer Aff., July 6, 2015, ¶ 5). As set forth in Mr. Shutzer's *Motion for Pre-Judgment Security No. 1*, Mr. Petrucci has a demonstrated track record of self-help measures and seeking to dissipate Red Rock assets during the pendency of legal disputes with Mr. Shutzer:

- When the parties were attempting to negotiate a buy-out of Mr. Shutzer's shares last summer, Mr. Petrucci secretly transferred the Avalanche Trademarks to a newly formed company, Avalanche Licensing, controlled by himself, his son, and his brother. (Verified Counterclaims, ¶ 9).
- In October, 2014, Mr. Petrucci unilaterally withdrew \$65,000 of Red Rock funds to make a mortgage payment to avoid foreclosure (again) on his personal residence. (Verified Complaint of Mr. Shutzer in *Shutzer v. Petrucci*, Docket No. ESCV2014-01588, attached at Tab B, ¶ 1). That is what prompted Mr. Shutzer to seek and obtain from this Court an *ex parte* restraining order to enjoin Mr. Petrucci has further alienating Red Rock assets. A copy of that prior Court order is attached at Tab C.
- In violation of the Agreement, Mr. Petrucci unilaterally seized control of Red Rock's bank accounts – which were to be controlled by Mr. Shutzer to secure receipt of the Stock Payment – in March, 2015, during the pendency of this action. (Verified Counterclaims, ¶ 27). He then unilaterally seized control of Red Rock's account with Merchants Factors, again in violation of the Agreement, only days after this Court denied his emergency motion for a Court Order permitting Merchants Factors to release Red Rock funds to an escrow account controlled by his representatives. (Amended Counterclaims, ¶¶ 23-26).
- Mr. Petrucci repeatedly has refused to account for Red Rock inventory recently "sold" to a supposedly independent retail store operated by his wife, Marie Petrucci, for little or no consideration. (Shutzer Aff., July 6, 2015, ¶ 22(f)).

In light of Mr. Petrucci's poor creditworthiness and Mr. Shutzer's advanced age, it is appropriate to grant pre-judgment security in advance of the December 1, 2015 trial of this matter. (Shutzer Aff., July 6, 2015, ¶¶ 5-6, 25).

The equities weigh in favor of granting prejudgment security. Basic fairness demands that Mr. Petrucci cannot get away with seizing 100% control of Red Rock without paying Mr. Shutzer for the redemption of his 50% interest in Red Rock. Through this motion, Mr. Shutzer is seeking to enforce the Plaintiffs' written promise that: "Until Red Rock's obligations to Mr. Shutzer herein are paid in full, Red Rock and Avalanche [Licensing] each shall agree to not sell or transfer all or substantially all of their assets, including but not limited to, in the case of Avalanche [Licensing], the Avalanche trademark(s)." (Para. 1(D)). Plaintiffs can demonstrate no justifiable reason why they would have any need to sell all or substantially all of their assets, or to dilute the Avalanche Trademarks, in advance of the December 1, 2015 trial. The only reason Plaintiffs would seek to do so would be to purposefully deprive Mr. Shutzer of the Stock Payment.

Furthermore, this Court's Order should enjoin Plaintiffs from paying any dividends to shareholders, distributions to members, or bonuses to officers, directors, members, and employees during the pendency of this action. Plaintiffs are fully aware of the multi-million dollar Stock Payment obligation looming over them, which will soon be adjudicated at a trial scheduled to begin on December 1, 2015. The only reason Mr. Petrucci would seek to have Red Rock and Avalanche Licensing pay out dividends, distributions, or bonuses to himself, his family members, and other directors and employees in advance of December 1, 2015 would be enrich themselves and deprive Mr. Shutzer of the Stock Payment. Plaintiffs should therefore be enjoined from paying any such dividends, distributions, or bonuses.

WHEREFORE, Mr. Shutzer respectfully requests that this Court **ALLOW** this motion and issue an Order providing that, until Red Rock's obligations to Mr. Shutzer under the Agreement are paid in full, Red Rock, Mr. Petrucci, and Avalanche Licensing shall not:

